

HOUSE BILL NO. 297

INTRODUCED BY B. EBINGER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE ON-PREMISES SALE OF FORTIFIED WINE UNDER A BEER AND WINE LICENSE; AUTHORIZING A BEER AND WINE LICENSEE TO PURCHASE FORTIFIED WINE AT AN AGENCY LIQUOR STORE; AND AMENDING SECTIONS 16-1-106, 16-3-301, AND 16-4-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under

1 a contract entered into under 16-1-302.

2 ~~(10)~~ (10) "Fortified wine" means wine that contains more than 16% but not more than 24% alcohol by volume.

3 ~~(10)~~ (11) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
4 juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol
5 by volume, including but not limited to flavored, sparkling, or carbonated cider.

6 ~~(11)~~ (12) "Immediate family" means a spouse, dependent children, or dependent parents.

7 ~~(12)~~ (13) "Import" means to transfer beer or table wine from outside the state of Montana into the state
8 of Montana.

9 ~~(13)~~ (14) "Liquor" means an alcoholic beverage except beer and table wine.

10 ~~(14)~~ (15) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
11 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts
12 or their products and with or without other malted cereals and with or without the addition of unmalted or prepared
13 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
14 products suitable for human food consumption.

15 ~~(15)~~ (16) "Package" means a container or receptacle used for holding an alcoholic beverage.

16 ~~(16)~~ (17) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
17 as fixed and determined by the department and in addition an excise and license tax as provided in this code.

18 ~~(17)~~ (18) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
19 50% of alcohol by volume.

20 ~~(18)~~ (19) "Public place" means a place, building, or conveyance to which the public has or may be
21 permitted to have access and any place of public resort.

22 ~~(19)~~ (20) "Retail price" means the price established by an agent for the sale of liquor to persons who do
23 not hold liquor licenses. The retail price may not be less than the department's posted price.

24 ~~(20)~~ (21) "Rules" means rules adopted by the department or the department of justice pursuant to this
25 code.

26 ~~(21)~~ (22) "Special event", as it relates to an application for a beer and wine special permit, means a short,
27 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

28 ~~(22)~~ (23) "State liquor warehouse" means a building owned or under control of the department for the
29 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

30 ~~(23)~~ (24) "Storage depot" means a building or structure owned or operated by a brewer at any point in the

state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(24)~~(25) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(25)~~(26) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

~~(26)~~(27) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(27)~~(28) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(28)~~(29) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1) (a) Except as provided in subsection (1)(b), it is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.

(b) A person holding a beer and wine license under 16-4-105 may purchase fortified wine from an agency liquor store for use by the licensee.

(2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery,

winery, or wholesaler licensed or registered under this code.

(4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

(a) any person under 21 years of age; or

(b) any person actually, apparently, or obviously intoxicated.

(5) Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(6) All licensees must display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

(7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within

1 incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities
2 and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

3 (i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate
4 limits of the towns, not more than one retail beer license;

5 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
6 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license
7 for every 500 inhabitants;

8 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate
9 limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the
10 next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every
11 additional 2,000 inhabitants;

12 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number
13 of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the
14 number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5
15 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated
16 within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use
17 in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must
18 be determined on the basis of the combined populations of both municipalities and may not exceed the limitations
19 in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must
20 be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest
21 corporate boundary of the city or town.

22 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that
23 are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of
24 the limitations;

25 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license
26 to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military
27 reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a
28 recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a
29 period of 5 years or more prior to January 1, 1949;

30 (e) the number of retail beer licenses that the department may issue for use at premises situated outside

1 of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the
2 corporate limits or for use at premises situated within any unincorporated area must be determined by the
3 department in its discretion, except that a retail beer license may not be issued for any premises so situated
4 unless the department determines that the issuance of the license is required by public convenience and
5 necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e).
6 The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling,
7 regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3,
8 5, or 6.

9 (2) (a) A person holding a license to sell beer for consumption on the premises at retail may apply to the
10 department for an amendment to the license permitting the holder to sell wine as well as beer. The department
11 may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for
12 consumption on the premises would be supplementary to a restaurant or prepared-food business. Except as
13 provided in subsection (2)(b) and except for beer and wine licenses issued pursuant to 16-4-420, a person
14 holding a beer and wine license may sell wine for consumption on or off the premises.

15 (b) Fortified wine may be sold by a person holding a wine amendment to a license to sell beer under this
16 section, but only for consumption on the premises.

17 (c) Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment
18 license.

19 (3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after
20 October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling
21 is conducted.

22 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the
23 application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the
24 department before October 1, 1997, if the application's mail cover is postmarked by the United States postal
25 service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the
26 department before October 1, 1997. An applicant who consigns an application to a private courier shall provide
27 to the department, upon demand, documentary evidence satisfactory to the department that the application was
28 consigned to a private courier before October 1, 1997.

29 (4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city
30 or town because of annexation after April 15, 2005, may not be transferred to another location within the city

1 quota area for 5 years from the date of the annexation."

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